

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

TERRENCE EDWARDS,

Movant,

vs.

UNITED STATES OF AMERICA,

Respondent.

5:05-CV-0965

Related Criminal Case:

5:03-CR-0243

(NAM)

APPEARANCES:

OF COUNSEL:

Terrence Edwards
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John M. Katko, Esq.
Assistant U.S. Attorney

Norman A. Mordue, Chief U.S. District Judge

DECISION AND ORDER

On February 24, 2004, petitioner Terrence Edwards pleaded guilty before this Court to the First Count of the Superceding Indictment returned against him by a federal grand jury which charged him with conspiracy to engage in a pattern of racketeering activity contrary to 18 U.S.C. § 1962(d). *See United States v. Edwards*, No. 03-CR-0243, Dkt. No. 256. Edwards was thereafter sentenced by this Court to a term of imprisonment of 100 months, to be followed by a four year term of supervised release. *Id.*, Dkt. No. 562.

On August 1, 2005, Edwards filed a Motion to Vacate, Set Aside or Correct his sentence pursuant to 28 U.S.C. § 2255. *See Edwards v. United States*, No. 05-CV-0965. The only claim asserted as a ground for relief in that application is Edwards' claim that his trial attorney rendered ineffective assistance of counsel because he failed to file a notice of appeal on behalf of Edwards. *See Motion to Vacate, Ground One.*

The record establishes, however, that on December 31, 2004, counsel *did, in fact, file* a notice of appeal on Edwards' behalf. *See United States v. Edwards*, No. 03-CR-0243, Dkt. No. 559. That appeal was thereafter dismissed by the Second Circuit in light of the valid appellate waiver Edwards executed along with his guilty plea in the underlying criminal action. *See United States v. Edwards*, No. 05-6971-cr (2d Cir. Oct. 2, 2006).

Since the sole ground asserted by Edwards in support of his Motion to Vacate is clearly refuted by the objective, record evidence, the present Motion to Vacate is denied and dismissed with prejudice.

WHEREFORE, it is hereby

ORDERED that Edwards' Motion to Vacate (05-CV-0965, Dkt. No. 1) is **DENIED** and this action is **DISMISSED WITH PREJUDICE**, and it is further

ORDERED, that the Clerk of the Court serve a copy of this Order on the parties by regular or electronic mail.

IT IS SO ORDERED.

Dated: March 4, 2008


Norman A. Mordue
Chief United States District Court Judge